

## REMARKS

Reconsideration and allowance of this application are respectfully requested in light of the following remarks.

### Claim Status

Claims 1-20 were presented in the originally filed application. Claims 14-20 are subject to restriction. Claims 1-13 are pending. Claims 1, 3-5 and 13 are amended.

### ELECTION/RESTRICTION

In the restriction requirement of April 10, 2008, the Examiner restricted this case to six different inventions:

Group I, claim(s) 1-13, drawn to a method for cultivating microorganisms of the genus *Thraustochytriales* in a fermentation medium with no more than a minor addition of other pH-stabilizing means and/or CaCO<sub>3</sub>.

Group II, claim(s) 14, drawn to isolated oil product having at least 20 % DHA.

Group III, claim(s) 15, drawn to isolated oil product having at least 20 % DP A.

Group IV, claim(s) 16, drawn to a 90% pure product of DHA.

Group V, claim(s) 17, drawn to a 90% pure product of DPA.

Group VI, claim(s) 18-20, drawn to a biomass of *Thraustochytriales* and feed/food product comprising the biomass of *Thraustochytriales*.

In order to comply with the restriction rules Applicant elects Group I with traverse. Applicant retains the right to file one or more divisional applications on the subject matter not elected here.

In the instant application there are only two independent claims 1 and 13, both in group I. Applicant asserts that claim 1, as amended, is a generic claim and that the rest of the groups are simply species and if the generic claim is patentable then the generic species should be patentable as well.

Applicant would like to remind the Office of 37 CFR 1.141(b) which states:

(b) Where claims to all three categories, product, process of making, and process of use, are included in a national application, a three way requirement for restriction can only be made where the process of making is distinct from the product. If the process of making and the product are not distinct, the process of using may be joined with the claims directed to the product and the process of making the product even though a showing of distinctness between the product and process of using the product can be made.

Applicant here has made a claim that the product is distinctive and has dependent claims for the use of this product. Therefore under 37 CFR 1.141 (b), groups II, III, IV, V and VI, all belong in the same application.

Applicant notes that the Examiner has averred that claim 1 does not have a special feature as Bajpai teaches cultivating Thraustochytriales in a fermentation medium. Applicant traverses based on the amendment to claim 1. Claim 1 is amended to include the feature taught in claim 3. In contrast to the instant invention, Bajpai as cited in the Restriction Requirement teaches cultivating Thraustochytrium aureum in a medium containing 0.2 g/l. In this respect, please note that the cultivation method referred to in claims 1-12 are of direct consequence for the lipid profile of the oil (claims 14 and 15) and the biomass (claim 18 and, as contained in the animal feed and the foodstuff, claims 19 and 20) as can be seen, for example, from tables 1 and 4 which show that the DHA content in the dry biomass is increased when Thraustochytriales is cultured in a medium containing no  $\text{CaCO}_3$ . Therefore, the method and products of the suggested claims are deemed to be novel and non-obvious, and meet the requirement of unity of invention.

In the alternative the Examiner should at least consider rejoining claims 18-20 with claims 1-13 as the International

Search Report supports the view that claims 1-13 and 18-20 possess unity of invention.

Pursuant to the restriction requirement claims 14-20 have been withdrawn as belonging to a group or species not elected. Based on the arguments above traversing the Restriction Requirement Applicant respectfully requests rejoinder of these claims upon allowance of claim 1. In the alternative Applicant retains the right to file one or more divisional applications on the subject matter not elected here.

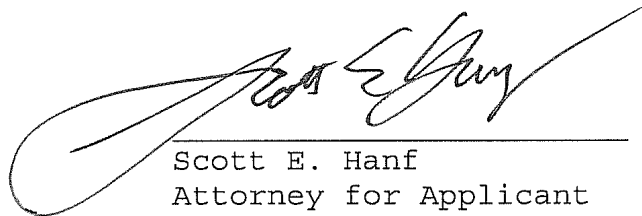
#### Claim Amendments

In this response to the outstanding restriction requirement the pending claims have been amended in accordance with the European application. Independent claims 1 and 13 both include the feature of claim 5. Claim 5 is amended to claim one of the preferred ranges taken out in the preliminary amendment. Claims 3 and 4 are amended to affirmatively state the type of acid referred to in the abbreviation in those claims. No new matter has been added.

As Applicants have not exceeded the number of claims which they originally paid for, no new fee is believed to be due. However, if the office determines that a credit is due, or an additional fee is necessary, than they are authorized to charge deposit account 08-2447.

Reconsideration and allowance of this application is respectfully requested.

Respectfully submitted,



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